

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BEVERLY TAYLOR,

Plaintiff,

v.

No. CIV 00-1395 BB/RLP

PATRICIA MADRID, ATTORNEY
GENERAL OF THE STATE OF NEW
MEXICO, in her individual and official
capacities, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court for consideration of Defendant Patricia Madrid's partial motion to dismiss (Doc. 11). The Court has reviewed the submissions of the parties and the relevant law, and, for the reasons set forth below, finds that the motion to dismiss will be granted.

Defendant Madrid has moved to dismiss parts of Count I, and all of Count II, of Plaintiff's complaint. Defendant maintains the following: (1) Plaintiff's 42 U.S.C. § 1983 claim, insofar as it is based on violation of the New Mexico Constitution, must be dismissed because § 1983 claims provide relief for violation of federal law, not state law; (2) Plaintiff's § 1983 claim against Defendant in her official capacity must be dismissed, because money damages may not be obtained from a state and an official-capacity suit is the equivalent of

a suit against the state; and (3) all of Count II must be dismissed because Count II is a wrongful-termination cause of action, and Defendant's immunity, as a state employee acting within the scope of her duties, has not been waived for wrongful-termination claims.

In response, Plaintiff argues as follows: (1) her claim for violation of the New Mexico Constitution is not brought under § 1983, but as a supplemental claim under state law; (2) her claim for damages is brought only against Defendant in her individual capacity, not her official capacity; and (3) Defendant is a law enforcement officer, and immunity has been waived under the New Mexico Tort Claims Act for a law enforcement officer who commits the tort of wrongful discharge.

It is apparent from the above that Plaintiff has conceded the motion to dismiss as to Defendant's request to dismiss any § 1983 claim for violation of the state constitution, and any such claim for money damages against Defendant in her official capacity. Therefore, the motion to dismiss will be granted as to those claims.¹ Two issues remain--whether Plaintiff may maintain a state-law claim for violation of the New Mexico Constitution, and whether the wrongful-termination claim may proceed. Chief Judge James A. Parker has addressed these exact issues, with respect to this Defendant, in an opinion recently filed. *Ortega v. Madrid*, CIV No. 00-1414 (slip op. filed 3/6/2001). Chief Judge Parker held that no provision in the Tort Claims Act provides a waiver of immunity for lawsuits against

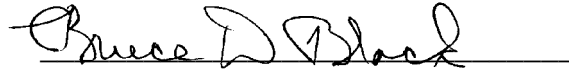
¹Plaintiff notes that she may wish to amend her complaint to include a request for injunctive relief under § 1983. Nothing in this opinion should be construed as affecting such a claim, as there is no issue before this Court at this time concerning such claim.

Defendant for violations of the New Mexico Constitution. In addition, Chief Judge Parker held that Defendant is not a “law enforcement officer” for purposes of the Tort Claims Act, and that a wrongful termination claim therefore may not be maintained against her. The Court sees no reason to depart from Chief Judge Parker’s apt reasoning, and will adopt it here as to both issues. Therefore, the wrongful-termination claim and the state-law claim based on violation of the New Mexico Constitution will both be dismissed.

ORDER

Based on the foregoing, it is hereby ORDERED, ADJUDGED and DECREED that Defendant Patricia Madrid’s motion to dismiss (Doc. 11) be, and hereby is, GRANTED.

Dated this 19th day of April, 2001.


BRUCE D. BLACK
United States District Judge

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